



## COUNCIL MINUTES

July 3, 2008

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on July 3, 2008 at 7:39 a.m.

### COUNCIL PRESENT

Mayor Scott Smith  
Alex Finter  
Dina Higgins  
Kyle Jones  
Dennis Kavanaugh  
Dave Richins  
Scott Somers

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Christopher Brady  
Debbie Spinner  
Linda Crocker

(Councilmember Finter participated in the entire meeting through the use of telephonic equipment.)

#### 1. Review items on the agenda for the July 8, 2008 Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflicts of interest declared: None

Items removed from the consent agenda: 6d

Items added to the consent agenda: None

Items deleted from the consent agenda: None

#### 2. Hear a presentation, discuss and provide direction on immigration policies.

Mayor Smith stated that the City Charter obligates the Council to set policy relative to law enforcement. He explained that the document entitled "Clarification – Immigration and Customs Enforcement Protocol," which is the subject of today's discussion, contains both policy and procedures and said that "where one ends and where one begins is sometimes fairly murky." (See Attachment 1.) Mayor Smith suggested that the Council "sort out" the policy and procedural issues as they proceed through the process. He further indicated that while the

Council sets policy and provides direction to staff, it is also important that the City of Mesa has procedures in place that give its police personnel the flexibility to carry out such policy.

Police Chief George Gascón displayed a PowerPoint presentation (A copy is available for review in the City Clerk's Office) and briefly reviewed some of the Mesa Police Department's (MPD) recent achievements, such as a 15% reduction in serious crimes in the last two years (a 7% reduction in the past year), increased productivity, and a significant reduction in overtime costs. He explained that when the Council discusses the "Clarification – Immigration and Customs Enforcement Protocol," which would provide guidelines for the management of undocumented persons that come into contact with Mesa law enforcement officers, it is important to remember the MPD's efforts to address public safety within the community.

Chief Gascón also advised that the MPD has endeavored to reduce crime in Mesa by partnering with U.S. Immigration and Customs Enforcement (ICE); clarifying the arrest order relative to undocumented foreign nationals (last revised in 2004); and soliciting input and feedback from other law enforcement agencies and community partners in order to revise the MPD's arrest procedures and policies.

Chief Gascón further spoke regarding the process undertaken by the City of Mesa to request 287(g) training (Section 287(g) of the Immigration and Nationality Act) for MPD officers through ICE. He indicated that although such training would allow the MPD to accurately determine the immigration status of arrested persons, it is important to note that immigration is an issue that must ultimately be resolved at the Federal level. Chief Gascón explained that Mesa is awaiting a response from ICE regarding its request for training. He said, however, that during a recent visit to Washington, D.C., Mayor Smith and City Manager Christopher Brady facilitated an interim practice with ICE which would allow the following conditions: 1.) The MPD would have the ability to obtain oral detainers via telephone when a suspect is detained and there is probable cause to believe the person is in the country illegally; and 2.) ICE would pick up or make arrangements for the MPD to transport the individual to the Federal jail facility in Phoenix.

Discussion ensued relative to the fact that if the MPD received "a hold" from ICE and a suspect proceeded through the arraignment process and was released on bail or their own recognizance, the ICE "hold" would take place and the person would be picked up by ICE; and that if an individual were held to answer to criminal charges, once the prosecution process is completed, the person would be turned over to ICE for Federal immigration action/deportation.

Chief Gascón provided a short synopsis of various incidents in which the MPD initiated ICE responses in an attempt to resolve criminal activities (i.e., drop houses, gang member activity and Part I Crime arrests). He also reviewed staff's efforts to compile a statistical analysis of undocumented foreign nationals who have been booked into Mesa's holding facility since February 2008. Chief Gascón additionally highlighted a series of MPD enforcement operations with ICE and other law enforcement agencies (i.e., "Operation Black Autumn," "Operation 480," and "Operation City Limits").

Additional discussion ensued relative to the fact that the "Clarification – Immigration and Customs Enforcement Protocol" mandates that police officers report anyone who they have probable cause to believe is in the country illegally when the person is arrested; clarifies the policy for individuals who commit lesser civil offenses and are cited and released; defines the process by which the MPD would notify ICE if a police officer had probable cause to believe that

a person is in the country illegally; and addresses the manner in which ICE would be contacted in reference to drop houses, human smuggling and “load vehicles,” which are used to transport/smuggle undocumented foreign nationals into the country.

In response to a series of questions from Mayor Smith, Chief Gascón explained that the United States Constitution provides a framework by which everyone in this country is protected under the law, whether they are legal residents or not. He explained that if, for instance, the MPD stopped every “brown person” to determine their immigration status, the arresting officers and the organization would “open itself” to criminal and civil liability. Chief Gascón added that the MPD does not have sufficient resources to handle all of Mesa’s public safety concerns, let alone immigration matters.

Councilmember Kavanaugh stated that his analysis of Chief Gascón’s presentation is that the MPD endeavors to ensure that the Constitutional rights of individuals are protected, to focus its resources on fighting crime and, in so doing, create a tool that provides clarity and understandability for police personnel on the street.

Chief Gascón concurred with Councilmember Kavanaugh’s assessment.

Chief Gascón noted that with regard to the new policy, MPD personnel would not ask a person’s immigration status under the following criteria: 1.) A victim of a crime; 2.) A witness to a crime; 3.) A juvenile; 4.) An individual stopped and/or cited for a civil traffic violation with a valid driver’s license or evidence of identity (pursuant to A.R.S. 28-1595 (B)); 5.) Someone seeking medical assistance; 6.) A victim of a domestic violence incident; and 7.) A community volunteer in police service (i.e., neighborhood watch, community forums, community advisory boards).

Extensive discussion ensued relative to when a person could be stopped and/or cited for a civil traffic violation and other circumstances (i.e., invalid identification or no identification) that could result in a criminal action and warrant the arrest of the individual; and various scenarios under which a person’s driver’s license and proof of insurance could be verified.

Chief Gascón concluded his presentation and requested that the Council allow the MPD 120 days to train police personnel prior to the implementation of the “Immigration and Customs Enforcement Protocol.” He explained that the MPD has a small cadre of trainers and stated that it is anticipated that there would be a number of “what if” questions that would be necessary to address. Chief Gascón added that in order to avoid incurring overtime, the training would be conducted in service at each police station.

Chief Gascón responded to a series of questions posed by various Councilmembers. His comments included, but were not limited to, the following:

- The protocol would not prohibit police personnel from questioning a documented or suspected juvenile gang member. If a juvenile committed an adult crime, the person would be treated as an adult.
- Police personnel would not, for instance, target a juvenile who informed his teacher that he was illegally brought into the United States. The child would not be turned over to Federal authorities so that deportation proceedings for the juvenile’s parents could be initiated.
- Staff is confident that the protocol is a legal and Constitutionally sound policy.

- A training manual would be included as part of the protocol and provide police personnel greater detail regarding the various processes.
- The MPD is more successful in solving crimes when residents in the community are willing to provide assistance in crime prevention protocols.
- Cite and release is used primarily with civil violations, but there are certain criminal events in which a person could also be cited and released (i.e., a minor shoplifting, low grade misdemeanors).
- A long form complaint is used for a person not in police custody, but for whom the MPD is seeking a warrant for his or her future prosecution.

Councilmember Somers expressed concern that the reference in the protocol (Page 3) to “A juvenile” not being asked about his or her immigration status is somewhat open ended and said that it might be appropriate for staff to expand the definition. He offered the following options: “A juvenile not in the process of committing a crime” or “Excluding gang members.” Councilmember Somers further suggested expanding the language “A community volunteer in police service...” so that it would apply beyond the MPD and be included on applications for all City advisory boards and committees. He proposed the following verbiage: “Are you a legal U.S. resident?”

In response to a question from Councilmember Richins, City Manager Christopher Brady clarified that outside vendors that enter into contracts with the City of Mesa must comply with all local, State and Federal laws, including the hiring of legal residents.

Vice Mayor Jones concurred with Councilmember Somers’ comments and stated that it would be important for the City to ensure that individuals who serve on Mesa’s boards and committees are legal residents.

Mayor Smith stated that in the protocol, the MPD is requesting that community volunteers in police service not be asked about their immigration status. He noted that as a separate issue, the Council could establish a policy, if they so chose, that anyone applying to serve on a City advisory board or committee be required to make a declaration of their status as a legal U.S. resident.

City Attorney Debbie Spinner advised the Council that the City can enforce trespassing laws on private property and cite day laborers that congregate in those areas. She noted, however, that on public sidewalks, trespassing laws do not apply and such areas are considered a public forum.

Mayor Smith commented that he would “make tradeoffs all day long” as long as citizens recognized that the first and foremost responsibility of government is to protect the basic rights of everyone in this country.

Further discussion ensued relative to the future implementation of wireless fingerprint technology and a database to access criminals who have been deported and illegally re-entered the United States; that such implementation has been delayed due to technology challenges at the State level; that it may be appropriate for the Council to consider bonding for such technology in two years; that the Council is “comfortable” with the overall policy, but would prefer that the definition of “A juvenile” be expanded, as previously discussed; that Councilmember Somers also requested greater clarity regarding the officer’s discretion to place

a “hold” on a suspect as opposed to “citing and releasing” the person; and that as a result of recently adopted State legislation regarding procurement/contracts, staff is modifying its processes to ensure that Mesa complies with the new law.

Councilmember Kavanaugh stated that the City Charter contemplates that the Council play a role in providing direction on law enforcement policies and noted that it would be an ongoing discussion throughout the course of their terms. He commented that in his opinion, there would be other issues that might arise during the police officers’ 120-day training period regarding the policies and procedures.

Councilmember Kavanaugh offered the following direction: that the Council concur with the policy revisions/clarifications as presented this morning; that they refer the matter to the Public Safety Committee for future review subsequent to completion of the 120-day training period so that staff can report back on any problems that might have arisen during the process or if they obtained any feedback/concerns from the community; and that the Committee forward the protocol to the full Council if it is necessary to implement further additions or clarifications. He added that the document would be “a work in progress” as are all law enforcement policies.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Richins, that the Council concur with the clarifications and revisions to the policy (as contained in “Clarification – Immigration and Customs Enforcement Protocol”).

Councilmember Richins stated that he would prefer that the Council review the policy on a regular basis not only to ensure that it provides police personnel with clarity and direction, but also so that Mesa has an effective policy in place “to combat the issue of illegal immigration.”

Councilmember Kavanaugh clarified that as part of his motion, he is also requesting that the MPD make a presentation to the Public Safety Committee following the completion of its 120-day training program for an evaluation of issues that have arisen during the process so that the Committee can report and make a recommendation to the Council in that regard.

Mayor Smith stated that separate from the pending motion, it might be appropriate for staff to draft specific policy wording and offer suggestions regarding advisory boards and committees and procurement issues that are non-police related. He suggested that the Council address such items at a future time.

Councilmember Somers inquired if Councilmember Kavanaugh’s motion included that the definitions of “A juvenile” and “cite and release” be expanded.

Councilmember Kavanaugh concurred that those items were included as part of the motion.

Mayor Smith called for the vote.

Carried unanimously.

Vice Mayor Jones expressed appreciation to Chief Gascón and his staff for their hard work regarding the policy revisions. He commented that when the previous arrest order for undocumented foreign nationals was revised, the Council was not given the opportunity to offer

input in that regard. Vice Mayor Jones noted that in this instance, the Council has provided direction and thanked staff for being responsive to such input.

Mayor Smith acknowledged Chief Gascón and Mr. Brady for their efforts in this regard. He commented that the City of Mesa's immigration policy revision is not a final solution and stated that staff and the Council would continue to review and make adjustments to the document. Mayor Smith noted that the City is making "some tough choices" and balancing the need to enforce the law and uphold everyone's Constitutional rights. He also thanked his fellow Councilmembers for their input and concurrence of the revisions to the policy.

3. Hear reports on meetings and/or conferences attended.

There were no reports on meetings and/or conferences attended.

4. Scheduling of meetings and general information.

City Manager Christopher Brady stated that the meeting schedule is as follows:

Tuesday, July 8, 2008, 7:30 a.m. – Mayor Smith's "Building a Better Mesa" Breakfast

Tuesday, July 8, 2008, TBA – Study Session

Tuesday, July 8, 2008, 5:45 p.m. – Regular Council Meeting

Thursday, August 14, 2008, 7:30 a.m. – Study Session

5. Items from citizens present.

There were no items from citizens present.

6. Adjournment.

Without objection, the Study Session adjourned at 9:35 a.m.

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SCOTT SMITH, MAYOR

ATTEST:

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LINDA CROCKER, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 3<sup>rd</sup> day of July 2008. I further certify that the meeting was duly called and held and that a quorum was present.

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LINDA CROCKER, CITY CLERK

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(attachment – 1)